

**REMARKS****I. Introduction**

Claims 1-26 are currently pending in the application. No claims have been added or canceled. Claims 1 and 12 have been amended. Applicant respectfully submits that no new matter has been added. Applicant respectfully requests reconsideration of the pending application in view of the foregoing amendments and the following remarks.

**II. Interview Summary**

Applicant provides this Statement reporting the substance of the telephone interview held with the Examiner on March 3, 2009. Ross Robinson and David Lovell discussed a proposed amended claim 1 and U.S. Patent No. 7,334,038 to Crow et al. with the Examiner. The rejection under 35 U.S.C. § 101 was also discussed. No agreement was reached.

**III. Objection to the Title**

The Office Action objects to the title for not being descriptive. In response, Applicant has submitted herewith a replacement title. Applicant respectfully requests that the objection to the title on this basis be withdrawn.

**IV. Rejection under 35 U.S.C. § 101**

Claims 1-26 stand rejected under 35 U.S.C. § 101 as being directed to unpatentable subject matter. In particular, the Office Action asserts that the recitation of at least one server in claim 1 encompasses both hardware and software servers and that therefore claim 1 encompasses both statutory and non-statutory subject matter. In response, Applicant has amended claim 1 to recite *at least one hardware server*. Claim 12 has been similarly amended. Applicant respectfully submits that amended claims 1 and 12 are directed to patentable subject matter. Applicant respectfully requests that the rejection under 35 U.S.C. § 101 of claims 1 and 12 be withdrawn.

Claims 2-11 and 13-26 each depend from one of independent claims 1 and 12. Applicant respectfully submits that, at least for the reasons given with respect to independent claims 1 and

12, claims 2-11 and 13-26 are also directed to patentable subject matter. Applicant respectfully requests that the rejection under 35 U.S.C. § 101 of claims 2-11 and 13-26 be withdrawn

#### **V. Rejection under 35 U.S.C. § 112**

Claims 1-26 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Particularly, the Office Action asserts that, since the claims do not clearly recite hardware, it cannot be clearly ascertained whether the claims encompass hardware, software, or a combination thereof. As discussed above with reference to the rejection under 35 U.S.C. § 101, claim 1 has been amended to recite *at least one hardware server*. Claim 12 has been similarly amended.

Applicant respectfully submits that claims 1 and 12 as amended overcome the rejection under 35 U.S.C. § 112, second paragraph. At least due to dependency from claims 1 and 12, Applicant respectfully submits that claims 2-11 and 13-26 also overcome the rejection under 35 U.S.C. § 112, second paragraph. Applicant respectfully requests that the rejection under 35 U.S.C. § 112, second paragraph, of claims 1-26 be withdrawn.

#### **VI. Objection to Claim 1**

The Office Action objects to claim 1 for a recitation of "its." In response, Applicant has amended independent claim 1 to remove this recitation. Claim 12 has similarly been amended. Applicant respectfully requests that the objection to claim 1 on this basis be withdrawn.

#### **VII. Rejection under 35 U.S.C. § 102**

Claims 1-26 stand rejected under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 7,334,038 to Crow et al. ("Crow"). The standard for anticipation is one of *strict identity*.<sup>1</sup> The Federal Circuit has stressed that anticipation is established only if: 1) all of the features of an

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<sup>1</sup> See, e.g., *Jamesbury Corp. v. Litton Industrial Products, Inc.*, 756 F.2d 1556, 1560 (Fed. Cir. 1985) (holding that a jury instruction that a patent is invalid for lack of novelty if the prior art "disclosed substantially the same things" was erroneous and noting that a verdict of invalidity for anticipation should be overturned when reasonable persons could not find the evidence clear and convincing that all the claim limitations were met by the prior art reference in question).

invention, as stated in a patent claim; 2) are identically set forth; 3) in a single prior art reference.<sup>2</sup> There must be no difference between the claimed invention and the reference disclosure.<sup>3</sup> As set forth in detail below, Applicant respectfully submits that Crow fails to survive this standard.

#### A. Claim 1

Applicant respectfully submits that Crow fails to teach multiple required features of claim 1, including: (1) that the customized core product meet a service need of at least one specific customer that is not met by the core product; and (2) that the at least one of specializing, replacing, and adding comprises generation of new code based on the service need of the at least one specific customer.

Crow discloses a distributed network environment for providing services offered by diverse sources to subscribers. *Crow*, Col. 4 Lines 14-16. Agents, service mediators, and service hosts are disclosed in the network environment. *Crow*, Col. 4 Lines 14-27. Services may be provided, for example, by an agent, service mediator, or service host. *Crow*, Col. 4 Lines 40-45. Subscribers may choose to subscribe to some services and not to others. *Crow*, Col. 4 Lines 23-27. Crow's objective is to obtain scalability in the provision of network of services. Hence, Crow focuses on methods for distributing services throughout the network environment. See *Crow*, Col. 4 Lines 32-40

According to Crow's disclosed system, the *service mediators* facilitate communication in the network environment and maintain a *service point map* that dynamically tracks address locations for services. *Crow*, Col. 5 Lines 9-21. At various points in time, services may be designated *active* or *inactive* in the service point map depending on, for example, whether a particular service provider is properly functioning and accessible. *Crow*, Col. 6 Lines 11-20. For a service to be included in the distributed network environment, a service "advertises" itself by publishing, to a service mediator, a listing that defines what service it provides and where it

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<sup>2</sup> *Nystrom v. Trex Co.*, 374 F.3d 1105, 1117(Fed. Cir. 2004) ("A patent is invalid as anticipated if every limitation in a claim is found in a single prior art reference."); *Merck & Co. v. Teva Pharmaceuticals USA, Inc.*, 347 F.3d 1367, 1372 (Fed. Cir. 2003) ("An 'anticipating' reference must describe all of the elements and limitations of the claim in a single reference, and enable one of skill in the field of the invention to make and use the claimed invention.").

<sup>3</sup> *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 927 F.2d 1565, 1576 (Fed. Cir. 1991).

can be located. *Crow*, Col. 5 Lines 37-53. Then, the service point map is updated by the service mediator to include the additional service. *Id.* Plug-ins to individual services may be developed and distributed in *Crow*'s system. See *Crow*, Cols. 15-16. However, the plug-ins are not customer-specific and are available to any subscriber in the network environment. See *Crow*, Col. 15 Line 59 – Col. 16 Line 7.

In contrast to claim 1, every aspect of *Crow*'s network environment is for the benefit of all potential subscribers. Furthermore, a potential subscriber must subscribe to the new service as-is. The new service does not meet a service need specific to at least one specific customer that is not met by the core product. Therefore, even if it is assumed for the sake of argument that *Crow*'s network environment is a *core product* as claimed in claim 1, Applicant respectfully submits that the new service that is added to the network environment is not a *customized core product* as required by claim 1.

Additionally, in contrast to claim 1, Applicant respectfully submits that *Crow* does not disclose that the at least one of specializing, replacing, and adding comprises generation of new code based on the service need of the at least one specific customer. As demonstrated above, *Crow* clearly is limited to allowing subscribers to use various existing services that are available to all subscribers. *Crow* does not disclose *generation of new code based on the service need of the at least one specific customer* as claim 1 requires.

For at least the reasons presented above, Applicant respectfully submits that *Crow* fails to disclose required features of claim 1 and thus fails to anticipate independent claim 1. Applicant respectfully requests that the rejection of claim 1 under 35 U.S.C. § 102 as anticipated by *Crow* be withdrawn.

## **B. Claims 2-26**

Independent claim 12 is directed to a method for at least one of specializing, replacing, and adding services of a service-oriented architecture. For reasons similar to those given with respect to independent claim 1, Applicant respectfully submits that claim 12 is also in condition for allowance. Applicant respectfully requests that the rejection under 35 U.S.C. § 102 of claim 12 be withdrawn.

Claims 2-11 and 13-26 each depend from and further patentably restrict one of independent claims 1 and 12. For at least the reasons given with respect to claims 1 and 12, Applicant respectfully submits that claims 2-11 and 13-26 are also in condition for allowance. Applicant respectfully requests that the rejection under 35 U.S.C. § 102 of claims 2-11 and 13-26 be withdrawn.

### **VIII. Conclusion**

In view of the above amendments and remarks, Applicant believes the application to be in condition for allowance. A Notice to that effect is respectfully requested.

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Respectfully submitted,

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